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MEDIATION AND LEGAL PROFESSION

One of the crucial communicative skills that future lawyers will need in their careers is mediation. This is an actual communicative skill, i.e. not a language skill in the traditional conception found in applied linguistics literature. Mediation is one of the “soft skills” that modern professionals increasingly need to be equipped with in the modern globalized world. When trained in a professional context, students need to develop and improve complex communicative skills. In case of legal professionals, this skill consists of the lawyers’ ability to provide their clients with information in such a form and manner that the clients may not only understand but, based on the information received, actually be able to make informed decisions. The concept of mediation originates in translation science [10; 9] but it has recently started to be applied in language learning as well, particularly on account of the inclusion of this skill in the Common European Framework of Reference for Languages (CEFR). Because of the lack of theoretical studies concept of mediation has not received much attention, and Language for Specific Purposes (LSP) methodology has not yet progressed sufficiently in order to incorporate this communicative skill in LSP classrooms and turn it into the subject of focussed practice.

Traditional accounts of English for Specific Purposes (ESP) methodology is focused on the four basic language skills: reading, writing, speaking and listening [5]. For each of these skills, there is an extensive methodological background to help students reach sufficient communicative competence [3]. Effective ESP instruction has come to rely on needs analysis as an inseparable part of any teacher involved in syllabus construction [6; 8]. The analysis of students’ future needs in the second language is a pre-requisite for the formulation of realistic targets. ESP targets can be efficiently formulated not only on the basis of the language teachers’ observation of real life

situations and pre-service students' statements on their self-perceived needs but also on the basis of former graduates' experience from the real life world of work in what can be referred to as 'transferred needs analysis' [1].

Students studying law at National University "Odessa Academy of Law" are required to take compulsory Foreign Language classes at the beginning of their studies, when they have only a very vague idea of what law and being a lawyer entails. Pre-service students are unable to foresee just how crucial it is to be able to process texts efficiently and how to communicate information to others, including non-experts. It appears that the extent to which the four basic skills are needed in lawyer-client communication, both in international and national contexts, is something that pre-service students find hard to imagine.

For lawyers, the primary meaning of mediation is the one that appears in the common collocation "litigation, mediation, and arbitration". In that sense, mediation equals "alternative dispute resolution (ADR)", i.e. a method of settling disputes between disagreeing parties out of court. In applied linguistics, the concept of mediation is different: it refers to a communicative skill that enables a person to overcome a communication gap – to provide information in a way that the recipient can not only understand but, based on the understanding, also use to make an informed decision. In their communication with clients, lawyers are likely to be asked to explain a legal situation, or consequences thereof, that fall within the scope of their expertise. The clients will not need to have a relevant law translated for them. Rather, they will want to know what it means for them in their unique situations. The work of the lawyer is thus that of a mediator rather than of a translator/interpreter. Mediation needs to be distinguished from translation and interpretation, with which it is sometimes confused. It is important to acknowledge that mediation concerns the processing and transmission of information not only between different language systems ("interlanguage mediation") but also between different levels of expertise ("intralanguage mediation").

The guidelines to Council of Europe's Common European Framework of Reference for Languages (CEFR), which describes achievements of learners of foreign languages from 2001, define mediation as both written and oral activities that: *make communication possible between persons who are unable, for whatever reason, to*

communicate with each other directly. Translation or interpretation, a paraphrase, summary or record, provides for a third party a (re)formulation of a source text to which this third party does not have direct access. [2, p. 14]

This definition captures two aspects of communication in legal contexts. First, legal professionals frequently act as genuine mediators between clients. Second, they also mediate, for the benefit of their clients, diverse legal texts, regulations and judgments that have institutional authors and may not be meant for specific recipients. It is worth to underline that the above definition does not limit the meaning of mediation to the rendering of meanings from one language to another (“interlanguage mediation”). Thus, mediation can involve communication (interpretation, paraphrase) entirely in one’s mother tongue [2, p. 57]. Such intralanguage mediation can, therefore, also cover expert-to-lay communication, with the mediator changing or adapting linguistic register in order to explain certain terms and concepts. In this way, the mediator helps the recipient achieve “literacy” or attain the capacity to use information in order to make specific informed decisions.

The process of mediation assigns a distinct role to the communicator. This role relates to the functions performed in the process: the monitoring, the facilitation and the negotiation of meanings. In this sense, the “mediator” is defined by Dendrinos as follows: *Mediation in Legal English Teaching – “a social actor who monitors the process of interaction and acts when some type of intervention is required in order to help the communicative process and sometimes to influence the outcome; – a facilitator in social events during which two or more parties interacting are experiencing a communication breakdown or when there is a communication gap between them; – a meaning negotiator operating as a meaning-making agent especially when s/he intervenes in situations which require reconciliation, settlement or compromise of meanings.”* [4, p. 10] Clearly, the skill of mediation places some specific demands on the mediator, going beyond a mere linguistic proficiency in the target language.

Mediation can be practiced in exercises at the development of receptive skills, e.g. in the form of listening comprehension exercises aimed. An interesting example of mediation occurs in Introduction to Legal English, which features the following explanation of legal terms between two legal systems:

Ms Fialov'a: First, can I check what kind of agreement you wanted? Basically, it comes down to the Czech equivalent of the periodic tenancy of the shorthold tenancy. There are other options available, but I wouldn't recommend them for your circumstances.

Ms Cervera: The periodic is the one that is automatically renewed at the end of the tenancy period, right?

Ms Fialov'a: Yes, and the shorthold guarantees a fixed period, after which you need to sign a new agreement. It runs from month to month once the fixed term has passed.

Ms Cervera: OK. I think that's what we've decided would be best. [7, p. 134]

The expert, Ms Fialov'a, explains the relevant terms, making a choice of which term to include and which not (There are other options available, but I wouldn't recommend them for your circumstances.). Thus, she leaves it to the client to make an informed decision, i.e. to choose which type of tenancy she wants to be used in her agreement. This can serve as a model for role plays on communication between a lawyer and a well-informed client (a negotiation of meaning takes place (The periodic is the one that is automatically renewed at the end of the tenancy period, right?)).

The question of whether lawyers will need mediation in their daily work with clients can be answered in the affirmative. CEFR points out that mediation occupies "an important place in the normal linguistic functioning of our societies" (2, p. 14) and it does not necessarily need to involve rendering meaning from two different languages (2, p. 54). Thus, a simple lawyer-client interaction in a legal consultation could be described as "mediation" where the lawyer fills the information gap between the source text (relevant law) and the client who needs the information to make a decision to act in a certain way.

Mediation, as a specific communicative skill requiring the rendering of information by a lawyer to his or her client in order to enable them to make an informed decision, has an important role in the teaching of Legal English. As demonstrated with the practical activity designed for the practice of this skill, mediation can involve both interlanguage and intralanguage communication, realistically attesting to the complexity of interactions in the modern professional world. These include not only the traditional language skills such as reading, writing, listening and speaking, but also more advanced skills such as summarizing, providing definitions, changing registers etc. All these are

involved in the students' acquisition of 'soft skills' that are particularly important for students of law since much of their future work involves interpersonal lawyer-client interaction.

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